

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**ROBERT J. SIMMONS, II,**

**Plaintiff,**

**1:10-cv-1386  
(GLS/RFT)**

**v.**

**GEORGE BARN A and ELGIN MANAGEMENT,**

**Defendants.**

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**APPEARANCES:**

**OF COUNSEL:**

**FOR THE PLAINTIFF:**

Robert J. Simmons, II  
Pro Se  
35 South Main Street  
P.O. Box 414  
Castleton, NY 12033

**FOR THE DEFENDANTS:**

NO APPEARANCE

**Gary L. Sharpe  
District Court Judge**

**MEMORANDUM-DECISION AND ORDER**

Robert J. Simmons, II brings this action under 42 U.S.C. § 1983 alleging violations of his constitutional rights. (See Compl., Dkt. No. 1.) In a Report Recommendation and Order (R&R) filed December 21, 2010,

Magistrate Judge Randolph F. Treece, after granting Simmons in forma pauperis status, recommended dismissal of Simmons's complaint under 28 U.S.C. § 1915(e)(2)(B) for failure to state a claim on which relief may be granted.<sup>1</sup> (See Dkt. No. 4.) Pending are Simmons's objections to the R&R. (Dkt. No. 6.) For the reasons that follow, the R&R is adopted and Simmons's complaint is dismissed.

Before entering final judgment, this court routinely reviews all report and recommendation orders in cases it has referred to a magistrate judge. If a party has objected to specific elements of the magistrate judge's findings and recommendations, this court reviews those findings and recommendations de novo. See *Almonte v. N.Y. State Div. of Parole*, No. 04-cv-484, 2006 WL 149049, at \*6-7 (N.D.N.Y. Jan. 18, 2006). In those cases where no party has filed an objection, or only a vague or general objection has been filed, this court reviews the findings and recommendations of a magistrate judge for clear error. See *id.*

Judge Treece recommended that the claims asserted by Simmons are subject to dismissal due to (1) the lack of any allegation that the named

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<sup>1</sup>The Clerk is directed to append the R&R to this decision, and familiarity therewith is presumed.

defendants—Simmons’s landlords—acted under color of state law; and (2) the failure to specify what civil right he is seeking to vindicate and how it was actually violated. (See R&R at 2-3, Dkt. No. 4.) In response, Simmons offers no specific objections to Judge Treece’s findings. Instead, with some further elaboration, Simmons reasserts the same allegations contained in his complaint. (See *generally* Pl. Objections, Dkt. No. 6.) Therefore, upon review of the R&R for clear error, the court finds none and adopts Judge Treece’s recommendations.

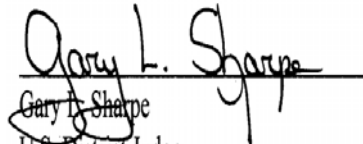
**WHEREFORE**, for the foregoing reasons, it is hereby

**ORDERED** that Magistrate Judge Treece’s Report Recommendation and Order (Dkt. No. 4) is **ADOPTED** and Simmons’s complaint is **DISMISSED**; and it is further

**ORDERED** that the Clerk close this case and provide copies of this Memorandum-Decision and Order to the parties by regular and certified mail.

**IT IS SO ORDERED.**

May 6, 2011  
Albany, New York

  
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Gary L. Sharpe  
U.S. District Judge